

P&I COVER OF OIL TANKERS, NEW DEVELOPMENT

Gist of the News

It is reported on the website of <http://www.hellenicshippingnews.com/suezmax-tanker-with-european-insurance-cover-calls-at-iranian-port-sources/> on August 7, 2014 that:

A Suezmax tanker with Western insurance cover visited two Iranian oil ports recently to load condensate cargo in a bid to take advantage of the easing of economic sanctions against Tehran, although concerns and risks over payment of claims remain, market sources said this week.

The Alexandra 1, which is run by Transland Bulk Carriers Limited, called at Iran's Assaluyeh oil port on July 25 in unladen status and left for the Iranian port of Kharg Island on July 29 after being loaded, according to market sources and Platts ship-tracking tool cFlow.

The vessel's trail also indicated it had called at Jebel Ali on August 2, where it is believed to have discharged its cargo.

The carrying of Iranian crude by the Alexandra 1 is considered to be a significant development since the vessel's protection and indemnity (P&I) cover is provided by the UK-based West of England P&I Club.

It is a major break from the recent past when ships covered by Western P&I clubs were barred from lifting oil cargoes from Iran due to the enforcement of the EU and US sanctions.

The issues to be discussed in this newsletter are:

1. What is the meaning of the vessel's "protection and indemnity (P&I) cover"?
2. How and when ships covered by the P&I clubs were barred from lifting oil cargoes from Iran?
3. What are the legal and economic repercussions of the above development?

Protection and Indemnity (P&I) cover

According to "An Introduction to P&I Insurance for Mariners" (pages 6-7) prepared by Skuld's Protection & Indemnity, the P&I cover has the following characteristics:

- a. Protection and Indemnity insurance, or "P&I" as it is usually called, is a shipowner's insurance cover for legal liabilities to third parties.
- b. The word protection simply means that the insurance also covers assistance when a ship is involved in an accident and the shipowner and his Master need help. Often the club's early intervention and assistance will help to head off problems and serve to protect the shipowner from inflated claims.
- c. "Third parties" are any person, apart from the shipowner himself, who may have a legal or contractual claim against the ship.

d. Legal liability is decided in accordance with the laws of the country where an accident takes place. The P&I insurance cover for contractual liability is agreed at the time the owner requests insurance cover from the club and is usually in accordance with the owner's responsibility under crew contracts or special terms relating to the trading pattern of the vessel.

e. P&I insurance is usually arranged by entering the ship in a mutual insurance association, usually referred to as a "club". Shipowners are members of such clubs.

f. P&I insurance is an indemnity type of insurance, which means the shipowner (or member of the club) must demonstrate his loss before the club will pay out (or indemnify him) under the terms of the insurance policy.

g. It is important to bear in mind that the club never assumes the owner's liability, therefore technically the owner (or member) is always responsible for payments (the "pay to be paid" principle).

h. In practice, the club takes over the business of handling claims and ensuring that payments are correctly made.

Western P&I clubs and the EU and the US sanctions

According to the "Circular 29/13: US/EU Iran sanctions - six month suspension of insurance prohibitions 20/01/14 – 20/07/14 - urgent update":

Following the US/EU announcements (and publication of relevant regulations/guidance) of a six-month suspension of current sanctions measures relating to certain trade with Iran, including sanctions targeted at insurance arrangements as reported in the Club circular issued on 17th January 2014 (Circular 26/13) the Group has been continuing engagement with the relevant US and EU regulators regarding the intended operation of the suspension of insurance sanctions.

What are the practical results of such suspension? The same Circular adds that:

In relation to the US implementation of the suspension measures, one issue on which the Group has been seeking clarification is the extent to which clubs, which provide insurance cover to Members during the six month suspension period in relation to the permitted trades, will be able to respond to liabilities arising during the suspension period, but which may not be crystallized or presented until after 20 July 2014. The US Office of Foreign Assets Control (OFAC) has advised that it is not presently able to confirm whether the insurance cover provided in respect of liabilities arising during the six month period will be prohibited from responding after 20 July 2014.

The difference between suspension of the EU and the US sanctions, as far P&I insurance coverage is concerned, is explained in a more clear language at the website of <http://www.tankeroperator.com/news/iranian-cargo-shipped-under-western-pi-cover/5857.aspx>:

While the US has allowed claim payments to be made after 24th November for incidents that occur during the suspension period, the same isn't the case with the EU, thus far.

The International Group of P&I Clubs has voiced its concerns and is currently talking with the European Commission to get the EU policy aligned with that of the US.

Hence, it is necessary to study the difference between these two types of sanctions.

US sanctions and the P&I insurance coverage

According to the “Publication of Guidance Relating to the Provision of Certain Temporary Sanctions Relief, as Extended” of the Office of Foreign Assets Control (OFAC):

For purposes of the JPOA sanctions relief, the USG interprets the term “associated service” to mean any necessary service – including any insurance, transportation, or financial service – ordinarily incident to the underlying activity covered by the JPOA, provided, however, that unless otherwise noted, such services may not involve persons identified on the Department of the Treasury’s Office of Foreign Assets Control’s (OFAC) List of Specially Designated Nationals and Blocked Persons (SDN List). (*Emphasis added*).

A major example of the above rule can be found in suspension of sanctions imposed on P&I insurance coverage according to the above text:

Insurance payments for claims arising from incidents that occur during the JPOA period and/or the extended JPOA period may be paid after 24th November 2014, so long as the underlying transactions and activities conform to all others aspects of the sanctions remaining in place and the terms of the sanctions relief provided by the JPOA. Insurance and reinsurance companies should contact the USG directly with any inquiries. U.S. persons and U.S.-owned or -controlled foreign entities remain prohibited from participating in the provision of insurance or reinsurance services to or for the benefit of Iran or sanctioned entities, including with respect to all elements of the sanctions relief provided pursuant to the JPOA, unless specifically authorized by OFAC (*emphasis added*).

EU sanctions and the P&I insurance coverage

The EU Factsheet titled “E3/EU +3 nuclear negotiations with Iran: Terms of the agreement on a Joint Plan of Action, including measures to be undertaken by the European Union” dated January 17, 2014 reads as follows:

The EU will suspend the prohibition on the import, purchase or transport of Iranian petrochemical products. The suspension will also cover the provision of all related services such as financing, financial assistance, insurance and reinsurance, including for third States.

In the same text it is added that:

The EU will suspend the prohibition on the provision of insurance and transport in relation to Iranian crude oil. This suspension will allow the provision of transportation and insurance services to third states importing Iranian oil.

According to the “Circular 7/14: Iran Sanctions Circular on the Extension of Sanctions Relief under the Joint Plan of Action”:

The European Union has issued Council Decision 2014/480/CFSP of 21st July 2014, but it has not amended implementing Regulation 2014/42/EU so this Regulation remains in force in its original form extended beyond 20th July 2014 to 24th November 2014.

Article 1.8 of the Council Decision 2014/480/CFSP of 21st July 2014 provides that:

8.The prohibitions set out in Article 20(1)(b) and (c) and in Article 20(2) to the Ministry of Petroleum, listed in Annex II, shall be suspended until 24 November 2014, insofar as necessary for the execution, until 24 November 2014, of contracts for the import or purchase of Iranian petrochemical products.’.

It is noteworthy that in page 66 of the Annex II mentioned in Article 1.8 above, one can find the name of Iran Insurance Company that “has insured the purchase of various items that can be used in programmes that are sanctioned by UNSCR 1737. Purchased items insured include helicopter spare parts, electronics, and computers with applications in aircraft and missile navigation.”

Legal and economic repercussions of the recent development

To look at the legal economic repercussions of suspension of the insurance coverage, first we need to know more about the persons who are subject to this suspension. The “Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010” defines an Iranian person as follows:

'Iranian person, entity or body' means:

- (i) the State of Iran or any public authority thereof;
- (ii) any natural person in, or resident in, Iran;
- (iii) any legal person, entity or body having its registered office in Iran;
- (iv) any legal person, entity or body, inside or outside Iran, owned or controlled directly or indirectly by one or more of the above mentioned persons or bodies.

The extent of suspension, apparently, is very vast. Article 11.1 (d) of the above directive looks at another aspect of the insurance:

1. It shall be prohibited:

...(d) to provide, directly or indirectly, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance related to the import, purchase or transport of crude oil and petroleum products of Iranian origin or that have been imported from Iran.

The most important issue is to determine the subject of the insurance, i.e. ‘crude oil and petroleum products’. The list of ‘crude oil and petroleum products’ referred to in articles 11 and 31(1) is stated by the Annex IV of the above directive as follows:

HS Code: 2709 00

Petroleum oils and oils obtained from bituminous minerals, crude.

HS Code: 2710

Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils (save that the purchase, in Iran, of kerosene jet fuel of CN code 2710 19 21 is not prohibited provided that it is intended and used solely for the purpose of the continuation of the flight operation of the aircraft into which it is loaded).

HS Code: 2712

Petroleum jelly; paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured.

HS Code: 2713

Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals.

HS Code: 2714

Bitumen and asphalt, natural; bituminous or oil-shale and tar sands; asphaltites and asphaltic rocks.

HS Code: 2715 00 00

Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs).

Islamic and Iranian P&I club

The international sanctions imposed on Iran encouraged the Iranian companies to look for other sources of insurance coverage. One of them is the Islamic P&I Club that requires its correspondents to help the Members by immediately sending of qualified surveyors and experts to the vessel, to assist the Masters by making dynamic suggestions when necessary.

The Iranian P& I Club is established under the leadership of Moallem Insurance Company that covers the following risks:

1. Liability to crew members (e.g. medical expenses, repatriation, compensation claims for death and or injury);
2. Liability to persons other than seamen (stevedores, passengers);
3. Liability for collision and damage to fixed and floating objects (damage to docks, etc.);
4. Liability in respect of cargo carried on the entered ship (e.g. claims for short delivery, loss or damage to cargo);
5. Liability for pollution, oil pollution, and miscellaneous (including fines and other types of claims not included in the other major categories); and
6. Liability for wreck removal.

CONCLUSION

The international sanctions imposed on Iran were suspended by the P5+1 for six months and then the suspension was extended for another four months. This suspension enabled the international tankers to avail themselves of P&I insurance for mariners. A minor difference exists between the consequences of the suspension of the

US and the EU sanctions. Iranian and international parties to oil transport contracts may benefit or incur undesired liabilities as a result of this difference. It would be advisable, therefore, to study the difference and its consequences in more detail.

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